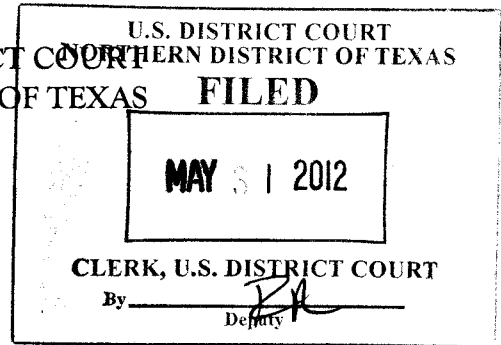


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



BENJAMIN ALEXANDER POTTS,
17034-077,

Petitioner/Movant,

v.

UNITED STATES OF AMERICA,
Respondent.

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3:11-CV-0357-B-BK
(3:10-CR-0015-B(01))

ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE, AND
DENYING CERTIFICATE OF APPEALABILITY

The United States Magistrate Judge made findings, conclusions and a recommendation in this case. Petitioner filed objections, and the District Court has made a *de novo* review of those portions of the proposed Findings, Conclusions and Recommendation to which objection was made. The objections are overruled. The Court **ACCEPTS** the Findings, Conclusions and Recommendation of the United States Magistrate Judge, **GRANTS IN PART** the motion to vacate, set aside, or correct sentence, under 28 U.S.C. § 2255, as to the first claim that Petitioner's defense attorney rendered constitutionally ineffective assistance of counsel in failing to file a requested notice of appeal and, alternatively, in failing to consult with Petitioner about appealing the revocation of his term of supervised release and the resulting sentence, **ORDERS** that Petitioner be permitted to file an out-of-time appeal in the underlying criminal action, and **DISMISSES** without prejudice the remaining section 2255 claims.

IT IS FURTHER ORDERED that the U.S. District Clerk will **RE-ENTER** the judgment

revoking Petitioner's supervised release in No. 3:10-CR-0015-B, **FILE** a notice of appeal on

Petitioner's behalf no later than 14 days after the re-entry of the criminal judgment, *see* FED. R.APP.

P. 4(b) (1)(A)), and **APPOINT** an attorney from the CJA panel to represent Petitioner on appeal.

SO ORDERED this 31st day of May, 2012.



UNITED STATES DISTRICT JUDGE